

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0301-06
Bill No.: Perfected SS for SCS for SBs 89 & 37
Subject: Crimes and Punishment; Law Enforcement and Agencies; Agriculture and Animals; Liability; Drugs and Controlled Substances
Type: Original
Date: April 11, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue Fund	(\$94,264 to Unknown)	(\$222,326 to Unknown)	(\$243,781 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds*	(\$94,264 to Unknown)	(\$222,326 to Unknown)	(\$243,781 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Health, and the Department of Public Safety -- State Highway Patrol** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Prosecution Services** assume the cost of the proposed legislation could be absorbed within the existing resources.

Officials from the **Office of the State Public Defender** assume that existing staff could provide representation for those cases arising where the indigent persons were charged with theft or attempted theft of anhydrous ammonia or liquid nitrogen and transportation, possession, or distribution of the precursors to methamphetamine. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Department of Corrections (DOC)** assume they are unable to determine the number of people who would be convicted for theft of anhydrous ammonia or possession of anhydrous ammonia, as detailed in this proposal. The DOC had a significant increase in the number of admissions for theft of anhydrous ammonia over the past two years (3 admissions in FY 99 and 18 admissions in FY00). The current average length of incarceration is 15 months for a class D felony and 19 months for a class C felony. New commitments which may result from the creation of the new offenses outlined in this proposal cannot be accurately determined. The utilization of these laws for both of these new offenses and enhanced penalties for current offenses depends on the actions of prosecutors and the courts. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation regarding theft of anhydrous ammonia or possession of anhydrous ammonia, the DOC will incur a corresponding increase in operational costs either through incarceration (FY99 average of \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (FY99 average of \$2.47 per offender, per day).

In FY00, the DOC had 15 admissions to prison and 30 to probation for possession of ephedrine or its derivatives with intent to manufacture methamphetamine. Probation also had 1 admission charged with distribution. These offenses were charged as class D felonies. Although the number of commitments due to the creation of the new crimes is unknown, DOC conservatively expects the offenders who will be convicted of sales, purchases, or possession of certain precursors to methamphetamine to be at least as many as those convicted for possession with intent to manufacture. Therefore, the DOC estimates that, in any given year, there will be 15 prison admissions serving an average of 10 months (the average time served for class D felony offenders in FY00) and 30 probation case openings supervised 4 years (the average probation for

ASSUMPTION (continued)

class D felonies in FY00).

DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates a snapshot of the midyear average population was used to determine fiscal impact.

The assumptions used by the DOC to determine cost, and rounded to the nearest whole number, include:

- \$35.61 (FY99 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year; and
- \$2.47 (FY99 cost) supervision costs with an inflation rate of 3% per each subsequent year.

	AVERAGE	OPERATING	AVERAGE	OPERATING	TOTAL COST
	POPULATION	EXPENSE	POPULATION	EXPENSE	W/ INFLATION
	(Incarceration)	(Incarceration)	(Probation)	(Probation)	
FY 2002	13	\$77,998	15	\$13,530	\$94,264
FY 2003	13	\$168,974	45	\$40,590	\$222,326
FY 2004	13	\$168,974	60	\$54,120	\$243,781

Based on the above-mentioned assumptions, the long range fiscal impact to the DOC is unknown, but is estimated at least to include the costs as follows:

	AVERAGE	OPERATING	AVERAGE	OPERATING	TOTAL COST
	POPULATION	EXPENSE	POPULATION	EXPENSE	W/ INFLATION
	(Incarceration)	(Incarceration)	(Probation)	(Probation)	
FY 2005	13	\$168,974	60	\$54,120	\$251,094
FY 2006	13	\$168,974	60	\$54,120	\$258,627
FY 2007	13	\$168,974	60	\$54,120	\$266,386
FY 2008	13	\$168,974	60	\$54,120	\$274,377
FY 2009	13	\$168,974	60	\$54,120	\$282,609
FY 2010	13	\$168,974	60	\$54,120	\$291,087
FY 2011	13	\$168,974	60	\$54,120	\$299,820
Total Ten-Year Fiscal Impact:					\$2,484,371

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this proposal to estimate the potential need for additional capital improvements. Estimated construction cost for one new medium-security inmate bed is \$48,300 at FY99 average costs. A maximum security inmate bed is \$55,000, also using FY99 average

ASSUMPTION (continued)

costs. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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GENERAL REVENUE FUND

<u>Cost - Department of Corrections</u> Incarceration/Probation costs	<u>(\$94,264 to Unknown)</u>	<u>(\$222,326 to Unknown)</u>	<u>(\$243,781 to Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposed legislation would classify the theft of any amount of anhydrous ammonia by stealing the tank truck, tank trailer, rail tank car, bulk storage tank, field tank or field applicator a class A felony. It would also classify as a class C felony the theft of any other amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen. It would also classify possession of anhydrous ammonia in a nonapproved container a class D felony. The proposal provides owners, operators, buyers, sellers, installers, and certain others, of anhydrous ammonia containers or equipment with immunity from civil liability and suits filed by persons who engage in unauthorized tampering with such containers and equipment, or any person related to a tamperer with such containers and equipment.

DESCRIPTION (continued)

This proposal also would require that sellers or landlords disclose, at least 5 days prior to any real

property or premises being sold or leased, that the property or premises was used to produce methamphetamine or that the property was the residence, storage site, or laboratory of a person convicted of listed crimes.

In addition, this proposal requires any manufacturer or wholesaler of ephedrine, pseudoephedrine, or phenylpropanolamine to obtain certain identifying information from any person engaging in a suspicious transaction, as defined in the proposal, and report the information to the Department of Health. A violation is a class D felony.

It shall be unlawful for any person to possess more than 5 grams of ephedrine or 12 grams of pseudoephedrine. The proposal contains exceptions for pharmacists, physicians and other professionals, manufacturers, wholesalers and distributors, and any person in their residence under circumstances consistent with typical medicinal or household use. Possession of more than the specified amounts shall constitute prima facie evidence of intent to manufacture methamphetamine or other controlled substance. A violation is a class D felony for the first offense, and a class C felony for the second or subsequent offense.

The proposal creates a class D felony for the sale or distribution of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine if the person knows that the purchaser will use the product as a precursor to manufacturing methamphetamine or other controlled substance, or with reckless disregard for its use. A second or subsequent offense is a class C felony.

The proposal also prohibits the purchase, or the sale or distribution by a retail distributor or employee in a single transaction, of more than 3 packages of products known to contain ephedrine, pseudoephedrine, or phenylpropanolamine; any single package of any of the substances containing more than 96 individual units; or more than 9 grams of the substances. A violation is a class A misdemeanor. The proposal lists certain exceptions, including pediatric products in specified amounts.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections

SOURCES OF INFORMATION (continued)

Department of Public Safety
State Highway Patrol

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Department of Health

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large initial "J" and a cursive "e" at the end.

Jeanne Jarrett, CPA
Director

April 11, 2001